

## **Part 7**

### **Request for Proposals**

#### **63G-6a-701 Title.**

This part is known as "Request for Proposals."

Enacted by Chapter 347, 2012 General Session

#### **63G-6a-702 Contracts awarded by request for proposals.**

- (1) A request for proposals standard procurement process may be used instead of bidding if the procurement officer determines, in writing, that the request for proposals standard procurement process will provide the best value to the procurement unit.
- (2) The request for proposals standard procurement process is appropriate to use for:
  - (a) the procurement of professional services;
  - (b) a design-build procurement;
  - (c) when cost is not the most important factor to be considered in making the selection that is most advantageous to the procurement unit; or
  - (d) when factors, in addition to cost, are highly significant in making the selection that is most advantageous to the procurement unit.
- (3) The procurement of architect-engineer services is governed by Part 15, Architect-Engineer Services.

Amended by Chapter 196, 2014 General Session

#### **63G-6a-703 Request for proposals -- Requirements -- Publication of request.**

- (1) The request for proposals standard procurement process begins when the division or a procurement unit with independent procurement authority issues a request for proposals.
- (2) A request for proposals shall:
  - (a) state the period of time during which a proposal will be accepted;
  - (b) describe the manner in which a proposal shall be submitted;
  - (c) state the place where a proposal shall be submitted;
  - (d) include, or incorporate by reference:
    - (i) a description of the procurement items sought;
    - (ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and
    - (iii) the standard contractual terms and conditions required by the authorized purchasing entity;
  - (e) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;
  - (f) state the formula that will be used to determine the score awarded for the cost of each proposal;
  - (g) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and
  - (h) state that best and final offers may be allowed, as provided in Section 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals.

- (3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 355, 2016 General Session

**63G-6a-704 Opening of proposals -- Limitation on accepting a proposal -- Rejecting a proposal.**

- (1) An issuing procurement unit shall ensure that proposals are opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process.
- (2) An issuing procurement unit may not accept a proposal after the time for submission of a proposal has expired.
- (3) At any time during the request for proposals standard procurement process, a conducting procurement unit may reject a proposal if the conducting procurement unit determines that:
  - (a) the person submitting the proposal is not responsible; or
  - (b) the proposal is not responsive or does not meet mandatory minimum requirements stated in the request for proposals.

Amended by Chapter 196, 2014 General Session

**63G-6a-706 Correction or clarification of proposal.**

- (1) The chief procurement officer or the head of a procurement unit with independent procurement authority may:
  - (a) allow a vendor to correct an immaterial error in a proposal, as provided in Section 63G-6a-114; and
  - (b) request a vendor to clarify information contained in a proposal, as provided in Section 63G-6a-115.
- (2)
  - (a) Notwithstanding Subsection (1) and except as provided in Section 63G-6a-707.5, after the deadline for submitting a cost proposal and before a contract is awarded, a vendor may not change the total amount of a cost proposal.
  - (b) Subsection (2)(a) does not apply to a change in the contract price during contract administration, as allowed under this chapter.

Repealed and Re-enacted by Chapter 355, 2016 General Session

**63G-6a-707 Evaluation of proposals -- Evaluation committee.**

- (1) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals, which may include:
  - (a) experience;
  - (b) performance ratings;
  - (c) inspection;
  - (d) testing;
  - (e) quality;
  - (f) workmanship;
  - (g) time, manner, or schedule of delivery;
  - (h) references;

- (i) financial solvency;
  - (j) suitability for a particular purpose;
  - (k) management plans;
  - (l) the presence and quality of a work site safety program, including any requirement that the offeror imposes on subcontractors for a work site safety program;
  - (m) cost; or
  - (n) other subjective or objective criteria specified in the request for proposals.
- (2) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- (3)
- (a) For a procurement of administrative law judge service, an evaluation committee shall consist of:
    - (i) the head of the conducting procurement unit, or the head's designee;
    - (ii) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and
    - (iii) the executive director of the Department of Human Resource Management, or the executive director's designee.
  - (b) For every other procurement requiring an evaluation by an evaluation committee, the conducting procurement unit shall:
    - (i) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:
      - (A) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
      - (B) the need that the procurement item is intended to address; and
    - (ii) ensure that the evaluation committee and each individual participating in the evaluation committee process:
      - (A) does not have a conflict of interest with any of the offerors;
      - (B) can fairly evaluate each proposal;
      - (C) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
      - (D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) A conducting procurement unit may authorize an evaluation committee to receive assistance:
- (a) from an expert or consultant who:
    - (i) is not a member of the evaluation committee; and
    - (ii) does not participate in the evaluation scoring; and
  - (b) to better understand a technical issue involved in the procurement.
- (5)
- (a) An evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.
  - (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
    - (i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and
    - (ii) may not:
      - (A) address criteria or specifications not contained in the offeror's original proposal;
      - (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;
      - (C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;

- (D) correct a failure to submit a timely proposal;
- (E) substitute or alter a required form or other document specified in the solicitation;
- (F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or
- (G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

(6)

- (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
- (b) The issuing procurement unit shall:
  - (i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;
  - (ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;
  - (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and
  - (iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.
- (c) The evaluation committee may not:
  - (i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or
  - (ii) change cost scores calculated by the issuing procurement unit.

(7)

- (a) As used in this Subsection (7), "management fee" includes only the following fees of the construction manager/general contractor:
  - (i) preconstruction phase services;
  - (ii) monthly supervision fees for the construction phase; and
  - (iii) overhead and profit for the construction phase.
- (b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:
  - (i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
  - (ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
  - (iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and
  - (iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

- (8)
  - (a) The deliberations of an evaluation committee may be held in private.
  - (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (9) An issuing procurement unit is not required to comply with Subsection (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:
  - (a) signs a written statement:
    - (i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and
    - (ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and
  - (b) makes the written statement available to the public, upon request.

Amended by Chapter 237, 2016 General Session

Amended by Chapter 355, 2016 General Session

**63G-6a-707.5 Best and final offers.**

- (1) At any time during the evaluation process, the evaluation committee, with the approval of the director or the head of the issuing procurement unit, may:
  - (a) request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals, if:
    - (i) no single proposal addresses all the specifications stated in the request for proposals;
    - (ii) all or a significant number of the proposals are ambiguous on a material point and the evaluation committee requires further clarification in order to conduct a fair evaluation of proposals;
    - (iii) the evaluation committee needs additional information from all offerors to complete the evaluation of proposals;
    - (iv) the differences between proposals in one or more material aspects are too slight to allow the evaluation committee to distinguish between proposals;
    - (v) all cost proposals are too high or over budget; or
    - (vi) another reason exists supporting a request for best and final offers, as provided in rules established by the applicable rulemaking authority; and
  - (b) evaluate those best and final offers.
- (2) In requesting and evaluating best and final offers under Subsection (1), the evaluation committee shall:
  - (a) ensure that each offeror receives fair and equal treatment with respect to the other offerors;
  - (b) establish a schedule and procedures for conducting discussions;
  - (c) ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded;
  - (d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals; and
  - (e) set a common date and time for the submission of best and final offers.
- (3) In a best and final offer, an offeror:
  - (a) may address only the issues described in the request for best and final offers; and

- (b) may not correct a material error or deficiency in the offeror's proposal or address any other issue not described in the request for best and final offers.
- (4) If an offeror chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the offeror before the conduct of discussions shall be treated as the offeror's best and final offer.
- (5) An applicable rulemaking authority shall make rules governing best and final offers under this section.

Amended by Chapter 355, 2016 General Session

**63G-6a-708 Justification statement -- Cost-benefit analysis.**

- (1)
  - (a) In determining which proposal provides the best value to the procurement unit, the evaluation committee and the conducting procurement unit shall prepare a written justification statement that:
    - (i) explains the score assigned to each evaluation category;
    - (ii) explains how the proposal with the highest total combined score provides the best value to the procurement unit in comparison to the other proposals;
    - (iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and how the cost-benefit analysis relates to the best value to the procurement unit; and
    - (iv) if applicable, includes the written determination described in Subsection (5).
  - (b) An explanation under Subsection (1)(a)(i) need not address each criterion within each category.
- (2) If, in determining the best value to the procurement unit, the evaluation committee awards the highest score, including the score for cost, to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation committee and the conducting procurement unit shall prepare an informal written cost-benefit analysis that:
  - (a) explains, in general terms, the advantage to the procurement unit of awarding the contract to the higher cost offeror; and
  - (b) except as provided in Subsection (5):
    - (i) includes the estimated added financial value to the procurement unit of each criterion that justifies awarding the contract to the higher cost offeror; and
    - (ii) demonstrates that the value of the advantage to the procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals.
- (3) If the informal cost-benefit analysis described in Subsection (2) does not justify awarding the contract to the offeror that received the highest score, the issuing procurement unit:
  - (a) may not award the contract to the offeror that received the highest score; and
  - (b) may award the contract to the offeror that received the next highest score, unless:
    - (i) an informal cost-benefit analysis is required, because the difference between the cost proposed by the offeror that received the next highest score and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and
    - (ii) the informal cost-benefit analysis does not justify award of the contract to the offeror that received the next highest score.

- (4) If the informal cost-benefit analysis described in Subsection (2) does not justify award of the contract to the offeror, described in Subsection (3), that received the next highest score, the issuing procurement unit:
  - (a) may not award the contract to the offeror that received the next highest score; and
  - (b) shall continue with the process described in Subsection (3) for each offeror that received the next highest score, until the issuing procurement unit:
    - (i) awards the contract in accordance with the provisions of this section; or
    - (ii) cancels the request for proposals.
- (5)
  - (a) The evaluation committee, with the issuing procurement unit's approval, may waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee determines in writing that assigning a financial value to a particular procurement item or evaluation criterion is not practicable.
  - (b) A written determination under Subsection (5)(a):
    - (i) shall explain:
      - (A) why it is not practicable to assign a financial value to the procurement item or evaluation criterion; and
      - (B) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the procurement unit; and
    - (ii) may be included as part of the justification statement.
- (6)
  - (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection 63G-6a-707(7).
  - (b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (6)(a) to ensure that:
    - (i) a competitive process is maintained; and
    - (ii) the contract awarded is in the best interest of the procurement unit.

Amended by Chapter 355, 2016 General Session

**63G-6a-709 Award of contract -- Cancellation -- Rejection of proposal.**

- (1) After the completion of the evaluation and scoring of proposals and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the head of the procurement unit or designee for review and final determination of a contract award.
- (2) After reviewing the proposals, evaluation scores, and justification statement, including any required cost-benefit analysis, the head of the issuing procurement unit shall:
  - (a)
    - (i) award the contract as soon as practicable to the responsible offeror with the responsive proposal receiving the highest total score; or
  - (ii)
    - (A) if the head of the issuing procurement unit disqualifies an offeror under Subsection (3) who would otherwise have been awarded a contract, award the contract to the responsible offeror with the responsive proposal receiving the next highest total score; and
    - (B) if the head of the issuing procurement unit disqualifies an offeror under Subsection (3) who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat

- the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is awarded to a responsible offeror who is not disqualified; or
- (b) cancel the request for proposals without awarding a contract.
- (3) The head of an issuing procurement unit may reject a proposal if:
- (a) the offeror who submitted the proposal:
- (i) is not responsible;
- (ii) is in violation of a provision of this chapter;
- (iii) has engaged in unethical conduct; or
- (iv) fails to sign a contract within:
- (A) 90 days after the contract award, if no time is specified in the solicitation; or
- (B) a time authorized in writing by the head of the issuing procurement unit;
- (b) there is a change in the offeror's circumstances that, if the change had been known at the time the offeror's proposal was evaluated, would have caused the proposal not to have received the highest score; or
- (c) the proposal:
- (i) is not responsive; or
- (ii) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the solicitation.
- (4) A head of an issuing procurement unit who rejects a proposal under Subsection (3) shall:
- (a) make a written finding, stating the reasons for the rejection; and
- (b) provide a copy of the written finding to the offeror whose proposal is rejected.
- (5) If an issuing procurement unit cancels a request for proposals without awarding a contract, the issuing procurement unit shall make available for public inspection a written justification for the cancellation.

Amended by Chapter 355, 2016 General Session

**63G-6a-709.5 Publication of award and scores.**

- (1) The issuing procurement unit shall, on the next business day after the award of a contract is announced, make available to each offeror and to the public a written statement that includes:
- (a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;
- (b) the justification statement under Section 63G-6a-708, including any required cost-benefit analysis; and
- (c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score.
- (2) Subsection (1)(a) does not prevent the issuing procurement unit from using codes or another method in a statement under Subsection (1) to distinguish offerors to which the contract is not awarded and to indicate their scores, as long as an offeror cannot be matched with the score awarded to that offeror.

Amended by Chapter 196, 2014 General Session

**63G-6a-710 Multiple stage process.**

- (1) The division or a procurement unit with independent procurement authority may conduct a request for proposals in stages, where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages.

- (2) Except as otherwise expressly provided in this section, the division or a procurement unit with independent procurement authority shall conduct a multiple stage process in accordance with this part.

Amended by Chapter 445, 2013 General Session

**63G-6a-711 Procurement for submitted proposal.**

- (1) As used in this section:
  - (a) "Committee" is as defined in Section 63N-13-202.
  - (b) "Initial proposal" is a proposal submitted by a private entity under Section 63N-13-205.
- (2) After receipt by the chief procurement officer of a copy of an initial proposal from the committee in accordance with Subsection 63N-13-206(5), including any comment, suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a standard procurement process in compliance with this chapter.
- (3) The chief procurement officer or designee shall:
  - (a) review each detailed proposal received in accordance with Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program; and
  - (b) submit all detailed proposals that meet the guidelines established under Subsection 63N-13-208(1) to the committee for review under Section 63N-13-209.
- (4) For purposes of this chapter, the Governor's Office of Economic Development is considered a procurement unit with independent procurement authority for a procurement under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program.

Amended by Chapter 283, 2015 General Session